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Filing date: **02/14/2007**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	91173354
Party	Plaintiff WACOM CO., LTD and WACOM TECHNOLOGY CORPORATION WACOM CO., LTD and WACOM TECHNOLOGY CORPORATION ,
Correspondence Address	Joseph W. Berenato, III Berenato, White & Stavish, LLC 6550 Rock Spring Drive Suite 240 Bethesda, MD 20817 UNITED STATES jberenato@bwsiplaw.com
Submission	Other Motions/Papers
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Signature	/Daniel E. Valencia/
Date	02/14/2007
Attachments	oppn.mtn.setasidedefault.pdf ( 8 pages )(303023 bytes )

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

	X	
WACOM Co., Ltd. and WACOM	:	
TECHNOLOGY CORPORATION	:	
	:	
	:	
Opposers,	:	
	:	
V.	:	
	:	
	:	Opposition No. 91173354
LINX S.A.,	:	
	:	Mark : INTUIX
Applicant.	:	
	X	Serial No. 76/554068

**OPPOSITION TO MOTION TO SET ASIDE DEFAULT JUDGMENT AND MOTION  
TO DEEM ANSWER TIMELY FILED**

Wacom Co., Ltd. And Wacom Technology Corporation (“Opposers”) oppose the Motion To Set Aside The Default Judgment And Motion To Deem The Answer As Timely Filed, which was filed on February 6, 2007. Opposers respectfully request that the above-mentioned motion be denied.

First, the motion to set aside the default judgment should be denied, because Intuix, S.A. (“Intuix”), the entity that submitted the motion, has not established its right to take action in this opposition proceeding for the alleged mark INTUIX pursuant to 37 C.F.R. §3.73(b).

In its motion, Intuix includes a power of attorney signed by directors of “INTUIX SA (formerly LINX SA)” on behalf of Intuix. *See* Applicant’s answer, Exhibit A. However, Intuix does not provide any specifics about the relationship between the two entities Linx S.A.

(“Linx”), which is a party to this opposition proceeding, and Intuix. More importantly, even if it is assumed that Intuix is in privity with Linx, Intuix has not established that it presently owns the trademark application for the alleged mark INTUIX as required by 37 C.F.R. §3.73(b).

37 C.F.R. §3.73(b) requires an assignee to establish its ownership of the trademark application by submitting either (1) documentary evidence of chain of title or (2) a statement specifying where documentary evidence of a chain of title is recorded in the assignment records of the United States Patent and Trademark Office. Intuix has not met this requirement.

Further, with reference to this requirement, Opposers provide Exhibit A which shows that Linx is the present owner of the trademark application for the alleged mark INTUIX. Based on the trademark assignment records provided at [www.uspto.gov](http://www.uspto.gov), it appears that the present owner (Linx) has not recorded any other assignment that assigns the present trademark application to another entity, namely, Intuix, nor has the owner (Linx) filed a change of name document in the United States Patent and Trademark Office.

In view of the fact that Intuix has not provided any evidence of ownership of the alleged mark INTUIX, the entity Intuix has not established a right to take action in the present opposition proceeding. Specifically, Intuix has not established a right to (1) grant a power of attorney in the present trademark application of the alleged mark INTUIX and (2) file a motion to set aside the default judgment entered on January 31, 2007. Therefore, the Board should deny the motion to set aside the default judgment as not being submitted by the proper party to this opposition proceeding.

Second, assuming that the entity Intuix is the same as Linx (“Applicant”) and currently owns the present trademark application, Applicant’s motion should be denied, because Applicant

has failed to satisfy the requirements of Fed. R. Civ. P. 60(b) for relief from a final judgment.

The relevant portion of Fed. R. Civ. P. 60(b) states:

On motion and upon such terms as are just, the court may relieve a party or a party's legal representative from a final judgment, order, or proceeding for the following reasons: (1) mistake, inadvertence, surprise, or excusable neglect; (2) newly discovered evidence which by due diligence could not have been discovered in time to move for a new trial under Rule 59(b); (3) fraud (whether heretofore denominated intrinsic or extrinsic), misrepresentation, or other misconduct of an adverse party; (4) the judgment is void; (5) the judgment has been satisfied, released, or discharged, or a prior judgment upon which it is based has been reversed or otherwise vacated, or it is no longer equitable that the judgment should have prospective application; or (6) any other reason justifying relief from the operation of the judgment... Fed. R. Civ. P. 60(b).

Applicant has not shown any of the reasons (1) through (6) set forth in Fed. R. Civ. P. 60(b) justifying a relief from the Board's final judgment. In support of its motion, Applicant provides a declaration of counsel including (1) information about a concurrent litigation involving the entities Dexxon Digital Storage and Intuit, Inc neither one of which is a party to this proceeding, (2) information about another opposition proceeding (opposition no. 91/174,897) involving the same alleged mark INTUIX, and (3) minimal information surrounding the actual circumstances under which Applicant became aware of the present opposition proceeding. *See* Declaration of Jess M. Collen ¶ 1-2.

However, in its motion, Applicant does not provide any evidence of "mistake, inadvertence, surprise, or excusable neglect" required by Fed. R. Civ. P. 60(b) to justify setting aside the default judgment in this proceeding. In particular, Applicant's motion fails to allege any specific reason why this Board should set aside its default judgment, which was granted in favor of the Opposers.

Even if the present counsel for the Applicant became aware of this opposition proceeding after the notice of default had already been issued, Applicant, in its motion to set aside the

default judgment, does not cite any facts that tend to show a mistake, an inadvertence, a surprise, or an excusable neglect that could have resulted in the Applicant's default. That is, Applicant has failed to provide any factual information that would show an act or an omission on the part of either (1) the previous counsel for the Applicant or (2) the Applicant corporation itself (Linx) that would satisfy Fed. R. Civ. P. 60(b)(1) and warrant setting aside the default judgment.

In fact, Applicant does not even state in its motion that the previous counsel for the Applicant and the Applicant corporation itself (Linx) were not aware of the opposition that was filed by Opposers on October 10, 2006 and that the default was not willful.

As a final note with reference to the required showing under Fed. R. Civ. P. 60(b)(1) for a relief from a final judgment, Opposers note that the litigation involving Dexxon Digital Storage and the other opposition proceeding (opposition no. 91/174,897) also do not provide any evidence of "mistake, inadvertence, surprise, or excusable neglect" that would warrant setting aside the default judgment in favor of Opposers.

Therefore, Applicant has failed to make a satisfactory showing of a mistake, an inadvertence, a surprise, or an excusable neglect under Fed. R. Civ. P. 60(b)(1) required to set aside a final judgment of this Board.

The standard for setting aside default judgment is stricter than the standard for setting aside a notice of default. TMBP § 312.03. The stricter standard reflects public policy favoring finality of judgments and termination of litigation. *DeLorme Publishing Co. v. Eartha's Inc.*, 60 U.S.P.Q2d 1222, 1224 (TTAB 2000).

Among the factors to be considered in determining a motion to vacate a default judgment for failure to answer the complaint are (1) whether the plaintiff will be prejudiced, (2) whether

the default was willful, and (3) whether the defendant has a meritorious defense to the action.

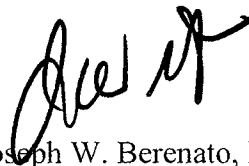
*Jack Lenor Larsen, Inc. v. Chas. O. Larson Co.*, 44 USPQ2d 1950 (TTAB 1997).

With reference to these factors, Opposers note that Applicant has not shown or even stated that the default was not willful. As set forth above, even if the present counsel for Applicant became aware of this opposition proceeding after notice for default had already been issued, Applicant, in its motion, does not provide any facts that tend to show a mistake, an inadvertence, a surprise, or an excusable neglect that would negate the possibility of a willful default by the Applicant.

In view of the fact that (1) Intuix has not established right to take action in this opposition proceeding and (2) Intuix's motion has not provided any evidence to justify setting aside the default judgment under Fed. R. Civ. P. 60(b)(1), Opposers request that the Board deny Intuix's motion to set aside the default judgment.

WHEREFORE, the Opposers pray that this Board DENY Applicant's motion to set aside the default judgment entered on January 30, 2007.

Respectfully submitted,



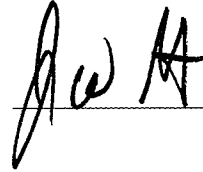
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Attorney for Opposers

Date: February 14, 2007

**CERTIFICATE OF SERVICE**

I, Joseph W. Berenato III, certify that a true and complete copy of the foregoing "Opposition To Motion To Set Aside Default Judgment and Motion to Deem Answer Timely Filed" has been served on Jess M. Collen by mailing said copy on February 14, 2007, via First Class Mail, postage prepaid to: Jess M. Collen, Collen IP, The Holyoke Manhattan Building, 80 S Highland Avenue, Ossining, NY 10562

February 14, 2007

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# EXHIBIT A



**United States Patent and Trademark Office**[Home](#) | [Site Index](#) | [Search](#) | [Guides](#) | [Contacts](#) | [eBusiness](#) | [eBiz alerts](#) | [News](#) | [Help](#)**Assignments on the Web > Trademark Query****Trademark Assignment Abstract of Title****Total Assignments: 1****Serial #:** 76554068**Filing Dt:** 10/24/2003**Reg #:** NONE**Reg. Dt:****Applicant:** Dexxon Groupe Holding**Mark:** INTUIX**Assignment: 1****Reel/Frame:** 3072/0865**Received:** 11/05/2004**Recorded:** 11/04/2004**Pages:** 3**Conveyance:** ASSIGNS THE ENTIRE INTEREST**Assignor:** DEXXON GROUPE HOLDING**Exec Dt:** 10/12/2004**Entity Type:** CORPORATION**Citizenship:** FRANCE**Assignee:** LINX SA

2A RUE DES CAPUCINS

LUXEMBOURG L-1313

**Entity Type:** CORPORATION**Citizenship:** NONE**Correspondent:** IRA S. DORMAN, ESQ.

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